

pending the resolution of the debtor's dispute.

§2418.12 How will the FLRA offset a Federal employee's salary to collect an FLRA debt?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts that FLRA employees and other Federal employees owe to the United States. If a Federal employee owes an FLRA debt, then the FLRA may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than the FLRA may collect debt from the salary of an FLRA employee, see §§2418.19 and 2418.20.

(2) Nothing in this part requires the FLRA to collect an FLRA debt in accordance with this section if Federal law allows otherwise. See, for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) The FLRA may use the administrative-wage-garnishment procedure described in §2418.13 to collect a debt from an individual's non-Federal wages.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in §2418.9(a), the FLRA will refer FLRA debts to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, the FLRA will attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. See 5 CFR 550.1109.

(c) *Non-centralized salary offset for FLRA debts.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, the FLRA may collect delinquent FLRA debts through non-centralized salary offset. See 5 CFR 550.1109. In these cases, the FLRA may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent debt that a Federal employee owes. At least thirty (30) days prior to offsetting internally or re-

questing a Federal agency to offset a salary payment, the FLRA will send notice to the debtor in accordance with the requirements of §2418.4. (For debts outstanding more than ten (10) years on or before June 11, 2009, the FLRA will comply with the additional notification requirements of 31 CFR 285.7(d).) When referring a debt for offset, the FLRA will certify to the payment agency, in writing, that the debt is valid, delinquent, and legally enforceable in the amount stated, and that there are no legal bars to collection by salary offset. In addition, the FLRA will certify that all due-process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due-process and other prerequisites for salary offset.

(d) *When prior notice not required.* The FLRA is not required to provide prior notice to an employee when the FLRA makes the following adjustments to an FLRA employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal-benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and the point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$ 50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Hearing procedures—(1) Request for a hearing.* A Federal employee who has received a notice that his or her FLRA

debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The Federal employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in § 2418.4. See § 2418.4(a)(11). The request must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, then the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (e)(1) of this section, then the employee will have waived the right to a hearing, and salary offset may be initiated. However, the FLRA will accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* The FLRA must obtain the services of a hearing official who is not under the supervision or control of the Chairman. The FLRA may contact an agent of any agency designated in appendix A to 5 CFR part 581 (List of Agents Designated to Accept Legal Process) to request a hearing official.

(4) *Notice of hearing.* After the employee requests a hearing, the designated hearing official shall inform the employee of the form of the hearing to be provided. For oral hearings, the notice shall set forth the date,

time, and location of the hearing. For paper hearings, the notice shall notify the employee of the date by which he or she should submit written arguments to the designated hearing official. The hearing official shall give the employee reasonable time to submit documentation in support of the employee's position. The hearing official shall schedule a new hearing date if requested by both parties. The hearing official shall give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official will conduct an oral hearing if he or she determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee by the hearing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, then he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, then the employee will have waived the right to a hearing, and salary offset shall be initiated. If the FLRA representative fails to appear at an oral hearing, then the hearing official shall proceed with the hearing as

scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* The FLRA will have the initial burden to prove the existence and amount of the debt. Thereafter, if the employee disputes the existence or amount of the debt, then the employee must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official shall maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the FLRA received the request for hearing. If the employee requests a delay in the proceedings, then the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, the FLRA shall waive penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision shall be final.

(f) *Waiver not precluded.* Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority.

(g) *Salary-offset process*—(1) *Determination of disposable pay.* The FLRA's Office of the Executive Director will determine the amount of an FLRA employee's disposable pay (as defined in §2418.1) and will implement salary offset when requested to do so by the FLRA, as described in paragraph (c) of this section, or another agency, as described in §2418.19. If the debtor is not employed by the FLRA, then the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions shall normally begin within three official pay periods following receipt of the creditor agency's request for offset.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, then such debt generally will be collected in one lump-sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount, or a higher deduction has been ordered by a court under section 124 of Public Law 97-276 (96 Stat. 1195), or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump-sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt.

(h) *Payment agency's responsibilities.*

(1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which the FLRA has requested salary offset, then the payment agency must certify the total amount of its collection and notify the FLRA and the employee of the amounts collected. If the payment

§ 2418.13

5 CFR Ch. XIV (1–1–16 Edition)

agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, then it must provide written notification to the payment agency responsible for making such payments that the debtor owes a debt, the amount of the debt, and that the FLRA has complied with the provisions of this section. The FLRA must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, then the FLRA may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, the FLRA will collect such monies through the Treasury Offset Program as described in § 2418.9(c).

(3) When an employee transfers to another agency, the FLRA should resume collection with the employee's new payment agency in order to continue salary offset.

§ 2418.13 How will the FLRA use administrative wage garnishment to collect an FLRA debt from a debtor's wages?

(a) The FLRA is authorized to collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). The FLRA may use administrative wage garnishment to collect a delinquent FLRA debt unless the debtor is making timely payments under an agreement to pay the debt in installments (see § 2418.6). At least thirty (30) days before initiating an administrative wage garnishment, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4 of this part, in-

cluding the requirements of § 2418.4(a)(10). (For debts outstanding more than ten (10) years on or before June 11, 2009, the FLRA will comply with the additional notification requirements of 31 CFR 285.7(d).) For FLRA debts referred to the Financial Management Service under § 2418.9, the FLRA may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 2418.4(a)(10). If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. See 31 CFR 285.11(f)(4). If a debtor's hearing request is not timely, then the FLRA may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. If a hearing is conducted telephonically, all telephonic charges incurred during the hearing will be the responsibility of the agency.

(b) This section does not apply to Federal salary offset, the process by which the FLRA collects debts from the salaries of Federal employees (see § 2418.12).

§ 2418.14 How will the FLRA report FLRA debts to credit bureaus?

The FLRA shall report delinquent FLRA debts to credit bureaus in accordance with 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A-129, "Policies for Federal Credit Programs and Nontax Receivables." For additional information, see Financial Management Service's "Guide to the Federal Credit Bureau Program," which may be found at <http://www.fms.treas.gov/debt>. At least sixty (60) days prior to reporting a delinquent debt to a consumer-reporting agency, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. Before disclosing information to a consumer-reporting agency, the FLRA shall provide, on request of a person alleged to be responsible for the delinquent debt, for a review of the obligation of the